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15 *Attorneys for Defendants*

16 UNITED STATES DISTRICT COURT
17 FOR THE DISTRICT OF NEVADA

18 JAMES V. DEPPOLETO JR.,
19 Plaintiff,

20 v.

21 TAKEOVER INDUSTRIES,
22 INCORPORATED, *et al.*
23 Defendant.

Case NO. 2:22-cv-02013-GMN-BNW

**DEFENDANTS' MOTION FOR LEAVE
TO FILE DOCUMENTS UNDER SEAL
or, ALTERNATIVELY FOR IN
CAMERA INSPECTION IN SUPPORT
OF DEFENDANTS' OPPOSITION
RESPONSE TO MOTION FOR
PARTIAL SUMMARY JUDGMENT**

24 COME NOW Defendants by and through counsel S. Don Bennion of the Law Office of
25 S. Don Bennion, and Jeffrey Whitehead Esq., of Whitehead & Burnett, and pursuant to LR IA
26 10-5, hereby submit the following Motion for Leave to File Documents Under Seal or
27 Alternatively for In Camera Submission under LR IA 10-4 ("Motion"), said documents were
28 previously produced to Plaintiff as DEF01113 to DEF01135, and identified as Exhibit H

1 (proposed Exhibit) in support of Defendants' Opposition Response to Motion for Partial
2 Summary Judgment. Ex. A. Accordingly, the aforesaid documents were not attached with the
3 Opposition to Plaintiff's Motion for Partial Summary Judgment.

4 Under LR IA 10-5(a), "papers filed with the Court under seal shall be accompanied by a
5 motion for leave to file those documents under seal." The Court may then "direct the unsealing
6 of papers filed under seal, with or without redactions, after notice to all parties and an
7 opportunity to be heard." LR IA 10-5(b).

8 Pursuant to LR IA 10-4, In Camera Submissions, "Papers submitted for in camera
9 inspection must not be filed with the court, but must be delivered to chambers of the
10 appropriate judge."

11 Historically, courts have recognized a "general right to inspect and copy public records
12 and documents, including judicial records and documents" and a strong presumption in favor
13 of access to court records and documents (*Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F. 3d
14 1122, 1135 (9th Cir. 2003)); however, that right is not absolute, *Nixon v. Warner Commc'ns,*
15 *Inc.*, 435 U.S. 589, 597 (1978); see also *Allstate Ins. Co. v. Shah*, 215CV01786APGDJA, 2023
16 WL 2307826, at *2 (D. Nev. Feb. 28, 2023) (ordering sealing of confidential financial
17 information and proprietary business information). A party seeking to seal documents in
18 support of a non-dispositive motion must only show "good cause" exists to seal the documents
19 in question. *Kamakana v. City and County of Honolulu*, 447 F. 3d 1172, 1179, 1180 (9th Cir.
20 2006).

21 Here, Defendants submit that this Motion is filed in an abundance of caution because
22 Defendants do not argue these documents labeled DEF01113 to DEF01135 are necessarily
23 "confidential" nor required to be sealed. As set forth in the Declaration of Michael Holley
24 submitted in support of Defendants' Opposition Response to Plaintiff's Motion for Partial
25 Summary Judgment, proposed Exhibit H contains "true and correct copies of documents
26 contained in the Takeover computer files I reviewed after the Board of Directors as
27 reconstituted November 7, 2022, gained access to these Company records including email(s)
28 correspondence, presentation plans, marketing plans and other documents unknown to me

1 prior to December 2022.” See Exhibit C, Declaration of Michael Holley, p. 3, para. 8, to
2 Defendants’ Opposition Response to Motion for Partial Summary Judgment. Ex. B.

3 For good cause, Defendants respectfully request leave to file the above-described
4 exhibit under seal or, alternatively for submission for in camera review by the Court in
5 connection with Defendants’ Opposition Response to Motion for Partial Summary Judgment.

6 DATED this 2nd day of February 2025.
7
8
9

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26
27
28

CERTIFICATE OF SERVICE

On February 2, 2025 I served the following document(s):

1. The document(s) were served in accordance with LR IC 4-1(c) by the following means to the person(s) as listed below:

DEFENDANTS' MOTION FOR LEAVE TO FILE DOCUMENTS UNDER SEAL or IN THE ALTERNATIVE FOR IN CAMERA INSPECTION IN SUPPORT OF DEFENDANTS' OPPOSITION RESPONSE TO MOTION FOR PARTIAL SUMMARY JUDGMENT

☐ a. ECF System

And all other parties requesting notice.

☒ b. US mail, postage prepaid

c. Personal Service:

d. By direct email (as opposed to the ECF system): Based upon the written agreement of the parties to accept service by email or a court order, I caused the document(s) to be sent to the person(s) at the email addresses listed below. I did not receive, within a reasonable time after transmission, any electronic message or other indication that the transmission was unsuccessful.

James Patrick Shea, Esq.

Nevada Bar No. 405

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☐ e. By fax transmission

Based upon the written agreement of the parties to accept service by fax transmission or a court order, I faxed the document(s) to the person(s) at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

☐ f. By messenger

I served the document(s) by placing them in an envelope or package addressed to the person(s) at the addresses listed below and providing them to a messenger for service.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ S. Don Bennion, Esq
Law Office of S. Don Bennion

EXHIBIT A

EXHIBIT A

EXHIBIT H

SUBMITTED FOR
“IN CAMERA VIEW”
PURSUANT TO MOTION TO SEAL
DEF 01113 to DEF01135

EXHIBIT H

EXHIBIT B

EXHIBIT B

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16 UNITED STATES DISTRICT COURT
17 FOR THE DISTRICT OF NEVADA

18 JAMES V. DEPPOLETO JR.,
19 Plaintiff,

Case NO. 2:22-cv-02013-GMN-BNW

20 v.

21 TAKEOVER INDUSTRIES,
22 INCORPORATED, *et al.*
23 Defendant.

DECLARATION OF MICHAEL
HOLLEY IN SUPPORT OF
OPPOSITION TO PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT

24 DECLARATION OF MICHAEL HOLLEY

25 I, Michael Holley state and declare as follows:

26 I am over the age of eighteen and I am a Defendant in the United States District
27 Court of Nevada case no. 2:22-cv-02013-GMN-BNW. I have personal knowledge of the facts
28

1 set forth in this Declaration except the information which is set forth herein based on my
2 information and belief, related to this matter.

3 1. I am a Defendant in the above-identified action and make this Declaration based on
4 my personal knowledge.

5 2. I have personal knowledge of the facts stated in this declaration and am competent to testify
6 to them.

7 3. I have worked in the beverage industry since 1994, accumulating 30 years of experience
8 launching and developing successful beverage brands.

9 4. In early 2021, as Chief Operating Officer, I launched Takeover Industries of which I am
10 one of the larger Creditors and also the personal Guarantor of the company credit cards.
11 The company achieved immediate success with our hydrogen water product, generating
12 approximately \$500,000 in revenue during our first weekend of launch.

13 5. In April 2021, Takeover engaged Jason Tucker as a consultant to assist with contract
14 negotiations and intellectual property matters. Tucker represented himself as having
15 expertise in negotiations and claimed prior work experience with federal agencies. These
16 credentials were later discovered to be false.

17 6. Between April and October 2021, I repeatedly addressed concerns with Tucker regarding
18 his conduct, particularly his treatment of team members which was negatively affecting
19 company operations.

20 7. I have personal knowledge that Tucker manipulated a situation involving Joe Pavlik,
21 presenting false evidence to myself and Toby McBride that resulted in Pavlik losing his
22 shares, which Tucker then acquired.

1 7. Attached to Defendants' Opposition to Plaintiff's Motion for Summary Judgment as
2 Exhibit A is a true and correct copy of the Resolution of the Board of Directors of Labor Smart,
3 Inc, and the Written Consent Board of Directors of Takeover Industries, Inc., dated November
4 7, 2022.

5
6 8. Attached to Defendants' Opposition to Plaintiff's Motion for Summary Judgment as
7 Exhibits H, I, L, M, and N are true and correct copies of documents contained in the Takeover
8 computer files I reviewed after the Board of Directors as reconstituted November 7, 2022,
9 gained access to these Company records including email(s) correspondence, presentation plans,
10 marketing plans and other documents unknown to me prior to December 2022.

11
12 9. In October 2021, while I was hospitalized with Covid-19, Tucker made false accusations
13 about me misappropriating company funds. Though I was later exonerated and reached a
14 settlement with Takeover, Tucker used my absence to gain sole control over company bank
15 accounts and credit cards.

16
17 10. In May 2022, during my forced absence, Tucker executed the first of three convertible note
18 agreements with James Deppoleto without proper board authorization.

19 11. Based on my direct knowledge of the alleged 2022 agreements, these convertible notes
20 contained terms that placed Takeover in technical default from the moment of execution.

21
22 12. In November 2022, after my return to the company, we discovered through company
23 communications that Tucker and Deppoleto were engaged in unauthorized negotiations
24 with 5-hour Energy for their personal benefit.

25 13. Takeover did not receive any type of refund from Great Northern Company for monies paid
26 by Deppoleto.
27
28

1 14. Takeover's Account Quick Report dated December 28, 2024, in the amount of
2 \$2,016,697.00, labeled DEF01383 was entered by Takeover's bookkeeper David Eisenberg
3 under the category "loans payable- James Deppoleto," which was the category Tucker
4 initially described these amounts in 2022 , based on my examination of the Takeover
5 records.
6

7 15. Upon Tucker's removal from the Board, he retained control of critical company assets by
8 refusing to surrender passwords and access to:

- 9
- 10 a. Company bank accounts
 - 11 b. QuickBooks financial records
 - 12 c. Shopify account
 - 13 d. Social media accounts
 - 14 e. Other vital business platforms
- 15

16 16. Tucker continued using company bank accounts through December 2022, leaving them
17 with negative balances.

18 17. Due to Tucker's mismanagement, Takeover:

- 19
- 20 a. Lost the NXTL LVL trademark
 - 21 b. Faced multiple demands from vendors totaling millions of dollars
 - 22 c. Could not attract new investors due to pending litigation
 - 23 d. Accumulated substantial debt
- 24

25 18. The formation of Next Gen Beverages was undertaken to protect shareholder interests and
26 create new value after Takeover's trademark loss and mounting legal challenges made
27 continuing business operations impossible under that entity. Takeover had little to no assets
28 left which none were used for Next Gen. Next Level Fitness water filed the trademark

1 months before Takeover did. They filed an action with the trademark commission and later
2 a lawsuit against Takeover.

3 19. Through our efforts with NextGen, we made the stock tradeable, enabling Deppoleto to
4 potentially realize value from approximately 400 million shares he possessed. Today these
5 shares were trading @.0018 which is a value of \$720,000.00.

6
7 20. I have read Defendants' Opposition to Plaintiff's Motion for Partial Summary Judgment
8 and hereby confirm that the facts set forth in the Opposition are true and correct to the best
9 of my knowledge other than the information I confirm based on my information and belief.

10
11 I declare under penalty of perjury that the foregoing is true and correct and if called
12 upon as a witness I could and would competently testify thereto.

13 Dated this 31st day of January 2025.

14 /s/ Michael Holley

15 Michael Holley
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